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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

RICHARD L. CHANG,

Plaintiff,

v.

ZHENG TAO HAN, an individual; CHI-MING
WU a/k/a/ FRED WU, an individual;
BIOSUCCESS BIOTECH, CO., LTD., a Cayman
Islands corporation; BIOSUCCESS BIOTECH,
CO., LTD., a Nevada corporation, and DOES 1
through 50, inclusive.

Defendants.

Case No.: 5:14-CV-00426-EJD

**DEFENDANTS' *EX PARTE* MOTION
FOR ORDER SETTING BRIEFING
SCHEDULE ON PLAINTIFF'S
MOTION TO DISMISS
COUNTERCLAIMS [Dkt No. 35] IN
LIGHT OF THE JUNE 6, 2014
HEARING ON MOTION TO
TRANSFER VENUE TO THE
CENTRAL DISTRICT OF
CALIFORNIA**

[Pursuant to F.R.C.P. 1 and 6; Civil L.R. 6-
1(b), 6-3, and 7-10]

[DECLARATION OF ENOCH LIANG
AND [PROPOSED] ORDER FILED
CONCURRENTLY]

Ctrm: 4-5TH Floor
Honorable Edward J. Davila

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1 remand this case to state court on April 21, 2014. [See Dkt No. 29]. Thereafter, all 4 Defendants
2 filed a motion to transfer this case to the Central District of California, where Plaintiff Richard
3 Chang originally sued Biosuccess in Case No. CV13-01340 JAK (ANx). [See Dkt No. 33]. That
4 Central District case is pending before Judge Kronstadt and is set for trial on June 17, 2014. This
5 Court granted Defendants' *ex parte* motion to advance the hearing date on the motion to transfer to
6 June 6, 2014. [See Dkt No. 37].

7 On April 14, 2014, Defendants filed their Answer and Counterclaims to Plaintiff's
8 complaint. [See Dkt Nos. 23-26]. On May 8, 2014, Plaintiff filed a 12(b)(6) motion to dismiss
9 Defendants' counterclaims. [See Dkt No. 35]. Plaintiff's 12(b)(6) motion is set to be heard on
10 July 18, 2014, which is well after the June 6 hearing on Defendants' motion to transfer venue.
11 Under NDCAL Local Rule 7-3, Defendants' opposition to Plaintiff's motion to dismiss is due on
12 May 22, 2014 (14 days after Plaintiff's motion to dismiss was filed).

13 **It would serve the interests of FRCP 1 and 6 and judicial efficiency to set a briefing**
14 **schedule for the parties' on Plaintiff's motion to dismiss Defendants' counterclaims:** FRCP 1
15 states that the Federal Rules of Civil Procedure "should be construed and administered to secure
16 the just, speedy, and inexpensive determination of every action and proceeding." FRCP 6(b)(1)
17 states that the Court "may, for good cause, extend the time: (A) with or without motion or notice
18 if the court acts, or if a request is made, before the original time or its extension expires . . ."
19 NDCAL Local Rule 6.1(b) states that—for papers required to be filed with the Court—"[a]
20 request for a Court order enlarging or shortening time may be made by . . . motion pursuant to
21 Civil L.R. 6-3."

22 Here, the most logical, just, speedy, and inexpensive course of action is to have the motion
23 to transfer venue decided before the parties are required to brief the Opposition and Reply to the
24 motion to dismiss Defendants' counterclaims. This holds true regardless of whether the Court
25 transfers or does not transfer the case to the Central District.

26 **If the Court transfers this case to the Central District, then Judge Kronstadt can**
27 **decide Plaintiff's motion to dismiss Defendants' counterclaims:** The crux of Plaintiff's
28 argument in its motion to dismiss is that "Defendants' counterclaims are duplicative of claims

1 filed in the Central District of California” pending before Judge Kronstadt. [See Dkt No. 35, at pp
2 3-5]. Of course, the reason for that is Plaintiff himself has engaged in impermissible claim
3 splitting by bringing some claims against Biosuccess in the Central District and bringing other
4 claims against Biosuccess (and related defendants) in Santa Clara Superior Court.

5 In any event, if this Court transfers this case to the Central District, Judge Kronstadt will
6 be best situated to determine if Defendants’ counterclaims are in fact duplicative or not.

7 **If the Court denies transfer of this case to the Central District, then there is still**
8 **plenty of time to file the Opposition and Reply in advance of the July 18, 2014 hearing on**
9 **Plaintiff’s motion to dismiss:** Even if the Court denies transfer to the Central District, given that
10 Plaintiff’s motion to dismiss Defendants’ counterclaims is currently set to be heard on July 18,
11 2014, there is enough time for the parties to file their Opposition and Reply in advance of the
12 hearing without affecting the July 18 hearing date.

13 **Defendants provided notice to Plaintiff of this *Ex Parte* Application:** On Tuesday,
14 May 20 (by email) and again on Wednesday, May 21 (on the telephone), Defendants provided
15 notice of this *ex parte* Application to Plaintiff’s counsel, and attempted to obtain a stipulation.
16 [Liang Decl., ¶¶ 2-3, Exh. A]. Plaintiff’s counsel indicated Plaintiff would oppose this *ex parte*
17 application.

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19 Dated: May 21, 2014

LEE TRAN & LIANG LLP

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21 By: /s/ Enoch H. Liang
22 Enoch H. Liang
23 Attorneys for Defendants
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